

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-294
Table of Allotments,)	RM-10543
FM Broadcast Stations.)	RM-10774
(Opal and Reliance, Wyoming)	
and Brigham City, Woodruff, Price)	
and Fountain Green, Utah) ¹)	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 27, 2005

Released: July 29, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rule Making* (“Notice”)² issued in response to a Petition for Rule Making filed by Black Diamond Broadcasting (“Petitioner”) proposing the allotment of Channel 263A at Opal, Wyoming, as its first local aural transmission service (RM-10543). Petitioner filed comments in support of the proposal stating its intention to apply for the channel, if allotment. In response to the *Notice*, Simmons-SLC, LS, LLC (“Simmons”), licensee of Station KEGH(FM) (formerly KJQN(FM)), Brigham, Utah, filed a counterproposal proposing the reallocation of Channel 264C from Brigham City to Woodruff, Utah, and the modification of Station KEGH(FM)’s license accordingly (RM-10774).³ To accommodate the reallocation, Simmons also proposed (a) the substitution of Channel 254C3 for vacant Channel 265C3 at Reliance, Wyoming; (b) the downgrade and channel substitution from Channel 265C2 to Channel 261A at Price, Utah, and the modification of Station KWSA(FM)’s license accordingly; and (c) the modification of the reference coordinates for vacant Channel 260A at Fountain Green, Utah. Simmons filed a supplement and reply comments. On May 20, 2005, Petitioner filed a request to withdraw its proposal.⁴

2. Simmons submitted its counterproposal pursuant to the provisions of Section 1.420(i) of the Commission’s Rules, which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing

¹ The communities of Reliance, Wyoming and Brigham City, Woodruff, Price, and Fountain Green, Utah, have been added to the caption.

² *Opal, Wyoming*, 17 FCC Rcd 18118 (MB 2002).

³ The counterproposal was placed on *Public Notice* on August 26, 2003, Report No. 2624 (RM-10774).

⁴ Pursuant to Section 1.420(j) of the Commission’s Rules, Petitioner stated that there are no agreements, written or oral, express or implied, relating to its withdrawal, and that neither Black Diamond Broadcasting, nor its principal, has received or been promised any consideration in exchange for the withdrawal of its Petition.

expressions of interest. In support of its proposal, Simmons states that Woodruff is a rural community located in Rich County. Woodruff is listed in the 2000 U.S. Census with a population of 194 persons, and is not located within any urbanized area. The community has a post office and zip code (84086). Woodruff has an independent government that has a mayor and town council. It also has its own local fire department, offering fire, rescue, EMS and other services to area residents. Woodruff has several local businesses. It is home to a Church of Jesus Christ of Latter Day Saints, which has a congregation of approximately 500 members. Among the events that are held in Woodruff are the Annual Parade and Rodeo each Fourth of July. Woodruff is a host for Race Across America, an internationally known cross-country bicycle race. Simmons affirms its intention to apply for the channel, if reallocated to Woodruff.

Discussion

3. Generally, conflicting proposals are comparatively considered under the Commission's FM allotment priorities.⁵ However, in the instant proceeding, it is not necessary to compare the Petitioner's and Simmons' proposals because Petitioner has requested that its proposal be withdrawn.

4. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments. We make this determination by using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁶ As a threshold matter, the Commission will not involuntarily require a licensee or permittee to change its class or transmitter site to accommodate another proposal. Here, because the reallocation of Channel 264C from Brigham City to Woodruff requires a downgrade, channel substitution, and a transmitter site change for Station KWSA(FM), Simmons has provided a consent statement from the licensee of Station KWSA(FM) for the proposed changes. Simmons states its willingness to reimburse the licensee of Station KWSA(FM) in accordance with the guidelines set forth in *Circleville, Ohio*.⁷

5. The reallocation of Channel 264C at Woodruff will provide a first local aural transmission service under Priority (3), without depriving Brigham City of its sole local service.⁸ By way of comparison, the retention of Channel 264C at Brigham City (population 17,411) would be a third local service to the community under Priority (4). Moreover, an engineering analysis has revealed that the reallocation of Channel 264C to Woodruff would provide new service encompassing an area of 26,475 square kilometers (10,222 square miles) with a population of 1,435,761 persons. Specifically, the reallocation would provide a third service encompassing an area of 1,511 (583.6 square miles) with a population of 1,572 persons; a fourth service encompassing an area of 4,630 square kilometers (1,788.4 square miles) with a population of 4,575 persons; and a fifth service encompassing an area of 1,965 square kilometers (759 square miles) with a population of 1,618 persons. The remainder of the gain area would receive five or more reception services and is considered to be well-served. The analysis also revealed that the reallocation would create no gray or white areas. However, the reallocation would create the loss

⁵ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁶ 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

⁷ See 8 FCC 2d 159 (1967).

⁸ Stations KXOL(AM) and KRAR(FM) would remain licensed to the community.

of a fifth service encompassing an area of 886.4 square kilometers (342.4 square miles) with a population of 38 persons, which is considered *de minimis*.

6. We believe that the public interest would be served by the reallocation of Channel 264C to Woodruff, Utah, because it would provide the community with its first local aural transmission service, without depriving Brigham City of its sole local service. To accommodate the reallocation, an engineering analysis has determined that Channel 264C can be reallocated to Woodruff in compliance with the Commission's minimum distance separation requirements with a site restriction of 65.8 kilometers (40.9 miles) south at petitioner's requested site. The coordinates for Channel 264C at Woodruff are 40-56-13 North Latitude and 111-00-35 West Longitude. To accommodate the reallocation, Channel 254C3 can be substituted for vacant Channel 265C3 at Reliance at its presently authorized site. The coordinates for Channel 254C3 at Reliance are 41-40-09 North Latitude and 109-11-47 West Longitude. Channel 261A can be allotted to Price with a site restriction of 6.0 kilometers (3.7 miles) south at petitioner's requested site. The coordinates for Channel 261A at Price are 39-32-42 North Latitude and 110-48-56 West Longitude. The reference coordinates can be modified for vacant Channel 260A at Fountain Green without the imposition of a site restriction at petitioner's requested site. The modified reference coordinates for Channel 260A at Fountain Green are 39-37-42 North Latitude 111-38-28 West Longitude. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station KEGH(FM) to specify operation on Channel 265C at Woodruff, Utah, as its new community of license.

7. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 12, 2005, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel</u>
Brigham City, Utah	295C
Woodruff, Utah	264C
Reliance , Wyoming	254C3
Price, Utah	252C3, 261A

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Simmons-SLC, LS, LLC, Station KEGH(FM), IS MODIFIED to specify operation on Channel 264C at Woodruff, Utah, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

9. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change of community of license of an FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Simons-SLC, LS, LLC, licensee of Station KEGH(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Against the Wind Broadcasting, Inc., Station KWSA(FM), IS MODIFIED to specify operation on Channel 261A at Price, Utah, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Report and Order* to the following:

Simmons-SLC, LS, LLC
515 South 700 East, Suite 1C
Salt Lake City, Utah 84102
(Licensee of Station KEGH(FM))

Against the Wind Broadcasting, Inc.
708 Curtis Street
Laramie, Wyoming 82070
(Licensee of Station KWSA(FM))

12. IT IS FURTHER ORDERED, That, as requested, the Petition for Rule Making (RM-205) filed by Black Diamond Broadcasting for the allotment of Channel 263A at Opal, Wyoming (RM-10543), IS DISMISSED.

13. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. §801(a)(1)(A).

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning the above, contact Sharon P. McDonald, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau